

Exhibit B

HEARING
SARA JAYNE KENNEDY vs MONADNOCK

April 30, 2018

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<p style="text-align: right;">Page 1</p> <p>1 IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT 2 IN AND FOR MIAMI-DADE, COUNTY, FLORIDA 3 4 Complex Business Division 5 Judge William L. Thomas 6 7 Consolidated Cases: 8 CASE NO. 15-06405-CA 44 9 CASE NO. 14-05447 CA 44 10 CASE NO. 14-02090 CA 44 11 12 SARA JAYNE KENNEDY, 13 Plaintiff, 14 vs. 15 MONADNOCK CONSTRUCTION, INC., et al. 16 Defendants. 17 18 HEARING BEFORE THE HONORABLE JUDGE WILLIAM THOMAS 19 20 Monday, April 30, 2018 21 11:10 a.m. - 11:30 a.m. 22 DADE COUNTY COURTHOUSE 23 MIAMI, FLORIDA 24 25 This cause came on to be heard at the time and place aforesaid, when and where the following proceedings were reported by: Cicely Moore, Court Reporter and Notary Public Esquire Deposition Solutions Miami, Florida 1-800-292-6952</p>	<p style="text-align: right;">Page 3</p> <p>1 (Thereupon, the following proceedings were had): 2 THE COURT: All right. Let's do the motion to 3 dismiss. 4 MR. GILBERT: Good morning, Judge. Jeffrey 5 Gilbert on behalf of Westchester Fire Insurance 6 Company. 7 MR. MAGOLNICK: Joel Magolnick on behalf of Sara 8 Jayne Kennedy and Ugo Colombo. 9 MR. GILBERT: And we submitted a notebook with 10 our three motions and our response and reply. 11 THE COURT: Let me get it. 12 MR. GILBERT: Thank you. 13 MR. LODISH: And just to note, Alvin Lodish is 14 here representing Monadnock, HPS 50, HPS Borden, and 15 Related Companies, and Bruce Beal. 16 THE COURT: You may proceed. 17 MR. GILBERT: Judge, we are here to dismiss the 18 three consolidated cases based upon a mandatory forum 19 selection clause that is in the indemnity agreement 20 which is the only agreement between the Colombos and 21 Westchester, okay, the only agreement. In the 22 responses of the Colombos, they don't challenge the 23 mandatory nature of the forum selection clause. They 24 don't meet any burden which they're obligated to meet 25 as the party challenging the mandatory forum selection</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 Joel S. Magolnick, Esquire 4 Marko & Magolnick, P.A. 5 3001 SW 3rd Ave 6 Miami, FL 33129 7 On behalf of the Plaintiff, 8 Sara Jayne Kennedy and Ugo Colombo 9 10 Jeffrey C. Gilbert, Esquire 11 Cozen O'Connor 12 200 S Biscayne Blvd, Ste 3000 13 Miami, FL 33131 14 15 On behalf of the Defendant, 16 Westchester Fire Insurance Company 17 18 Alvin D. Lodish, Esquire 19 Duane Morris LLP 20 200 S Biscayne Blvd, Ste 3400 21 Miami, FL 33131 22 On behalf of the Defendants, 23 Monadnock, HPS 50, HPS Borden, 24 Related Companies, and Bruce Beal 25 - - -</p>	<p style="text-align: right;">Page 4</p> <p>1 clause. They are supposed to meet the high burden that 2 they would have absolutely no forum whatsoever to 3 litigate their cases if they are not litigated here, 4 and in fact, all of the parties, as you know, are 5 litigating these cases in New York. 6 The mandatory forum selection clause, according 7 to the Third DCA and the Florida Supreme Court, all of 8 the cases that we've cited in the three motions to 9 dismiss in each of the consolidated cases and we've set 10 forth in our reply, state specifically that the 11 mandatory forum selection clauses in Florida are 12 presumptively valid; that the courts enforce them. And 13 again, the only way they would not enforce it is if the 14 party challenging it met the high burden that they 15 would have no forum at all whatsoever to litigate their 16 cases if they could not litigate them in Florida where 17 they are forum shopping. 18 There's absolutely no question that the clause is 19 valid. It is the only agreement between our client 20 Westchester and the Colombos. And just to give you a 21 little history on it, so the Colombos are principals in 22 the -- or they're the guarantors for the agreement that 23 Glasswall entered into with Monadnock and Related 24 people, to supply 9,000 units of glass, or whatever, to 25 two large buildings that were constructed in Long</p>

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<p style="text-align: right;">Page 5</p> <p>1 Island City, New York. There was an alleged default. 2 But to support the contract -- to support the contract, 3 Judge, the Glasswall and its principals, the Colombos, 4 Ugo Colombo and his wife Sara Kennedy Colombo, needed 5 to submit performance bonds, and the way that they were 6 able to submit performance bonds was they entered into 7 an agreement with Westchester and with -- excuse me, 8 with Westchester where Westchester is the surety and 9 the Colombos are the indemnitors. If you need me to 10 point you to the -- 11 THE COURT: Well, I'm looking for the selection 12 clause. 13 MR. GILBERT: Okay. If you look in Tab 5, Judge, 14 Exhibit A. So go to Tab 5, Exhibit A, Paragraph 10. 15 MR. MAGOLNICK: Your Honor, we'll stipulate that 16 the forum selection clause, when you look at the 17 indemnity agreement, the forum selection clause is a 18 mandatory forum selection clause. We stipulate to 19 that. It says what it says. The language says 20 "shall." So we don't dispute that. But that's not our 21 argument. 22 THE COURT: Okay. 23 MR. GILBERT: Their response is they don't even 24 address it, and now they've stipulated to it for the 25 first time, Judge. What they're alleging --</p>	<p style="text-align: right;">Page 7</p> <p>1 MR. GILBERT: Individually, that is correct. 2 THE COURT: But they have sued individually here 3 in Miami-Dade County. 4 MR. GILBERT: That's absolutely correct, Judge. 5 And they're being sued individually by Westchester in 6 the New York litigation. We think it's absolutely 7 clear that they have no right to be forum shopping and 8 litigating in the Florida courts when the mandatory 9 forum selection provision, which is presumptively valid 10 and should be upheld, is the only provision in the 11 agreement that exists between these two parties. 12 THE COURT: I understand. Sir. 13 MR. MAGOLNICK: First of all, in terms of the 14 claim -- first of all, Sara Jayne Kennedy is not a 15 principal in Glasswall. Everyone keeps saying that. 16 She's never been an officer, director, or member. Ugo 17 Colombo is, or to the extent the company exists. 18 THE COURT: Mr. Colombo lives here. 19 MR. MAGOLNICK: Yes. 20 THE COURT: He's with The Collection. Is that a 21 different person? 22 MR. LODISH: No, same person. 23 THE COURT: I have another case. That's all. 24 MR. MAGOLNICK: So the issue here, Your Honor, is 25 there's the indemnity agreement and then there are the</p>
<p style="text-align: right;">Page 6</p> <p>1 THE COURT: Go ahead, sir. I'm listening. 2 MR. GILBERT: Judge, what they're alleging is 3 that the bonds that came out from the indemnity 4 agreement -- and under these bonds there were two bonds 5 issued, a performance and payment bond. The -- 6 Westchester was the surety, Glasswall was the 7 principal, and the obligee of the performance bonds was 8 the developer/manager of the building, okay, to 9 guarantee the performance of the contract. His 10 individual clients are not parties to the bonds, 11 absolutely not parties to the bonds. The only 12 agreement is the indemnity agreement. 13 They are trying to allege in the case that they 14 filed against us in Florida, that they want a 15 declaration that somehow we are not -- that they are 16 not liable to us for any personal liability. The only 17 way they have personal liability to Westchester Fire 18 Insurance Company is based upon the two party agreement 19 that is the indemnity agreement. They're claiming that 20 they want to go under a forum selection provision 21 that's in the bonds, but they are not parties to the 22 bonds. Their company Glasswall is a party to the 23 bonds, but they are not parties to the bonds. 24 THE COURT: Meaning individually they are not 25 parties.</p>	<p style="text-align: right;">Page 8</p> <p>1 bonds. So while we don't dispute that the language of 2 the indemnity agreement is what they say it is, it is 3 what it is, but what we're here about now is that they 4 want to rely solely on the forum selection in the 5 indemnity agreement. But what we attach to all three 6 complaints, the amended complaint in 2014 for 7 Ms. Kennedy, the complaint for Mr. Colombo in 2014, 8 then the complaint in 2015 for Ms. Kennedy, was that we 9 attached the bonds, because without the bonds there is 10 no agreement for indemnity. It can't exist on its own. 11 That agreement for indemnity is -- is dependent on the 12 bonds. And if -- 13 THE COURT: How so? 14 MR. MAGOLNICK: Well, because without -- the only 15 reason those agreements for indemnity exist is because 16 Westchester issued bonds in favor of Monadnock, and the 17 only reason that my clients would be potentially liable 18 is if Westchester has to perform under the bonds. 19 That's undisputed. That's the only way my client can 20 be liable under the bonds. So because the agreement 21 for indemnity is wholly dependent on the bonds, we have 22 an interest in ensuring that the terms of the bonds are 23 complied with. 24 So in -- they ask that the Court focus 25 exclusively on the indemnity agreement and to ignore</p>

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<p style="text-align: right;">Page 9</p> <p>1 the language in the bonds. The language in the bonds</p> <p>2 specifically say that the jurisdiction for any claims</p> <p>3 relating to the bonds can be anywhere where any portion</p> <p>4 of the work was performed. What we have alleged in the</p> <p>5 complaint, and it's undisputed that we've alleged in</p> <p>6 the complaint and they don't dispute it, is that the</p> <p>7 part -- at least part of the work was done down here.</p> <p>8 The windows were manufactured down here and shipped up</p> <p>9 to New York. So there's no doubt about that.</p> <p>10 And what they also don't address in their reply</p> <p>11 is we've brought this under the declaratory relief act.</p> <p>12 So under 86.021, it says any person claiming to be</p> <p>13 interested or who may be in doubt about his or her</p> <p>14 rights under a contract or other instrument in writing</p> <p>15 or whose rights, status, or other equitable or legal</p> <p>16 relationships -- relations are affected by a contract</p> <p>17 may seek a declaration of rights, status, or other</p> <p>18 equitable or legal relations thereunder.</p> <p>19 THE COURT: But why can't you do that in New</p> <p>20 York?</p> <p>21 MR. MAGOLNICK: Your Honor, we filed here first.</p> <p>22 The New York action was a subsequent filed action that</p> <p>23 Westchester filed while this case was stayed.</p> <p>24 THE COURT: But no, my question is, is that if</p> <p>25 you're telling me that there is a mandatory forum</p>	<p style="text-align: right;">Page 11</p> <p>1 requiring it to be filed at any particular</p> <p>2 jurisdiction, but you then file it, a dec action here</p> <p>3 in Miami-Dade County.</p> <p>4 MR. MAGOLNICK: Right.</p> <p>5 THE COURT: Because you believe that your</p> <p>6 performance, pursuant to the indemnity agreement that</p> <p>7 should be litigated in New York, is wholly dependent or</p> <p>8 the bond doesn't come into play until the indemnity is</p> <p>9 established.</p> <p>10 MR. MAGOLNICK: No, it's actually the opposite.</p> <p>11 THE COURT: The opposite way.</p> <p>12 MR. MAGOLNICK: The indemnity doesn't come into</p> <p>13 play until Westchester's obligations under the bonds</p> <p>14 are established. Because we don't have an indemnity</p> <p>15 agreement -- an indemnity obligation if Westchester</p> <p>16 doesn't have to perform under the bonds.</p> <p>17 THE COURT: My question is -- and thank you.</p> <p>18 Sometimes it's hard keeping it all together. How do</p> <p>19 you -- so I don't understand. If the one agreement</p> <p>20 that you are a party to agreed that the case is</p> <p>21 mandatory -- should mandatory be filed in New York, why</p> <p>22 then should the bond issue that you are not a -- where</p> <p>23 there's no mandatory clause, where you are not a</p> <p>24 signatory to, right?</p> <p>25 MR. MAGOLNICK: We're not a signatory to. We</p>
<p style="text-align: right;">Page 10</p> <p>1 selection clause as to the main agreement --</p> <p>2 MR. MAGOLNICK: No, no, as to the indemnity</p> <p>3 agreement, not as to the bonds.</p> <p>4 THE COURT: Thank you.</p> <p>5 MR. GILBERT: It's the only agreement between our</p> <p>6 parties. The bonds are not an agreement between the</p> <p>7 parties.</p> <p>8 THE COURT: I'm sorry, I misspoke. There is a --</p> <p>9 there is a mandatory forum selection provision as to</p> <p>10 the indemnity agreement that you are a party of.</p> <p>11 MR. GILBERT: Correct.</p> <p>12 MR. MAGOLNICK: Yes, Your Honor.</p> <p>13 THE COURT: There is no forum selection --</p> <p>14 mandatory forum selection provision as it relates to</p> <p>15 the bonds.</p> <p>16 MR. MAGOLNICK: There is a -- a specific --</p> <p>17 THE COURT: No mandatory.</p> <p>18 MR. MAGOLNICK: No mandatory, Your Honor.</p> <p>19 THE COURT: Okay. And so you're saying to me, I</p> <p>20 agreed that this matter should be litigated in New</p> <p>21 York, the -- the agreement that I am a party to. The</p> <p>22 bonds, which you say are essential to your performance</p> <p>23 of the agreement that you are a party to --</p> <p>24 MR. MAGOLNICK: Yes, Your Honor.</p> <p>25 THE COURT: -- is -- it doesn't speak in terms of</p>	<p style="text-align: right;">Page 12</p> <p>1 are -- we are interested under the dec action statute.</p> <p>2 THE COURT: You're interested because you want to</p> <p>3 know that that somehow will trigger something.</p> <p>4 MR. MAGOLNICK: Right.</p> <p>5 THE COURT: So the question is, but you can't</p> <p>6 then transfer back to Miami and attempt to litigate</p> <p>7 that in Miami when the main cause -- because we</p> <p>8 shouldn't be litigating -- one thing that we all know,</p> <p>9 and hopefully we all will agree, that you got to be</p> <p>10 very careful in litigating issues that overlap in more</p> <p>11 than one jurisdiction because the -- the -- the</p> <p>12 confusion that could result, or better yet, the</p> <p>13 inconsistency in rulings that could result could wreak</p> <p>14 havoc for everybody. That's why I don't understand why</p> <p>15 this shouldn't go to New York.</p> <p>16 MR. MAGOLNICK: Because it was here first. They</p> <p>17 waited until --</p> <p>18 THE COURT: Go ahead, sir.</p> <p>19 MR. MAGOLNICK: They waited -- while there was a</p> <p>20 stay in -- stay in place here is when Westchester filed</p> <p>21 its action in New York against my clients. This action</p> <p>22 is down here and it's all interrelated with the claims</p> <p>23 that are -- with all the other defendants in this case</p> <p>24 because but for the claim between Monadnock and</p> <p>25 Glasswall, we wouldn't have this claim -- this case</p>

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<p style="text-align: right;">Page 13</p> <p>1 down here either. But for the claim between Glasswall 2 and Monadnock, we wouldn't have Westchester involved, 3 Westchester Fire Insurance involved. That's why it was 4 filed down here. My clients are down here. The bond 5 allows for any action under that relates to the bonds 6 to be filed anywhere where there -- where any portion 7 of the work was done. There's no -- 8 THE COURT: But isn't that defeating the whole 9 purpose of the mandatory forum selection clause? 10 Because what you're saying is, is that but the bond 11 doesn't tell me that I'm required to file in New York. 12 The bond leaves it open or at least says any party who 13 has any interest, and it's broad enough that I can file 14 it here. 15 And I understand and I'm asking them a question 16 about how this all transpired in terms of why they 17 filed what they did, where they filed it as compared to 18 when this case was pending, but I still don't 19 understand how I'm supposed to deal with the 20 possibility of these inconsistent rulings. What if I 21 do one thing and the judge in New York does something 22 totally opposite of what I do? How are we supposed to 23 resolve that? I can't tell there's a mandatory forum 24 selection clause that you're not challenging. I can't 25 tell them that they need to file it here and I can't</p>	<p style="text-align: right;">Page 15</p> <p>1 Westchester gets to say, well, we're liable so now we 2 go under the indemnity agreement. That's our position, 3 that right now where we are is because there's no 4 determination as to the -- as to the liability of -- of 5 Westchester to Monadnock under the bonds. So -- and 6 what we're saying is based upon the finding of the 7 arbitrators in New York, based upon the arbitration 8 award where they found Monadnock to have been in 9 breach, we're saying that because of that, Westchester 10 has no liability under the bond; and if Westchester has 11 no liability under the bonds, then we certainly have no 12 liability, because the only way we would have liability 13 is if Westchester is found to be liable to Monadnock 14 under the bonds. 15 MR. GILBERT: Judge, you're exactly correct. The 16 only agreement that is between the two of us is the 17 indemnity agreement. It has the mandatory forum 18 selection clause. When they argue to you that, well, 19 they filed here first -- 20 THE COURT: Can you read to me that -- where is 21 the -- where is the -- 22 MR. GILBERT: Yeah, the mandatory forum selection 23 clause, if you look at -- 24 THE COURT: Tab 5. 25 MR. GILBERT: You can look at Page 2, Tab 5, in</p>
<p style="text-align: right;">Page 14</p> <p>1 tell the New York judge what to do. The only thing 2 that is a little more open and fluid is the bond 3 because it can be filed anywhere and you've chosen to 4 file it here. And I'm not -- I mean, you said you had 5 a right to and your client lives here. 6 MR. MAGOLNICK: Sure. 7 THE COURT: And he has an interest, obviously, in 8 the bond, as you have reflected. So I'm just -- I'm 9 just a little taken aback because I'm not sure how I'm 10 supposed to deal with that, because I think if I agreed 11 with you I would be rendering the mandatory forum 12 selection clause a nullity. 13 MR. MAGOLNICK: Well, Your Honor, you're not -- 14 I'm not -- when you say that we're not challenging the 15 mandatory forum selection clause, we're not denying its 16 existence and we're not denying that we're a party to 17 an agreement that has that mandatory forum selection 18 clause. What we are challenging is the applicability 19 of that mandatory forum selection clause to this 20 particular proceeding. Right now, because there's been 21 no determination -- there's been no determination under 22 the bonds, this is where we should be if this is where 23 we chose to file. There is no -- there's -- there's -- 24 it's not as though there's already been a determination 25 of Westchester's liability to Monadnock and then</p>	<p style="text-align: right;">Page 16</p> <p>1 the middle of the page. 2 THE COURT: Give me one minute, please. 3 MR. GILBERT: Yeah. 4 THE COURT: See, sir, can I ask you a question? 5 MR. MAGOLNICK: Sure. 6 THE COURT: "All actions or proceedings arising 7 directly or indirectly from this agreement shall be 8 litigated only in courts having status within the state 9 of New York and consents to the personal jurisdiction 10 venue." 11 MR. MAGOLNICK: Sure. 12 THE COURT: So when you say -- when it says 13 "directly and indirectly," because you're basically 14 saying I'm not a party to the bond, right? 15 MR. MAGOLNICK: Right. 16 THE COURT: But the bond indirectly -- the bond 17 proceedings indirectly impact me pursuant to the 18 agreement that I have that I am a party to. So I don't 19 understand why that doesn't put you up in New York. 20 MR. MAGOLNICK: Because it's -- 21 MR. GILBERT: And it does, Judge. 22 THE COURT: Well, one minute. 23 MR. MAGOLNICK: Because we're not -- this is not 24 an action that's indirectly under the indemnity 25 agreement. It is an action based upon the bonds.</p>

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<p style="text-align: right;">Page 17</p> <p>1 What -- what -- we have an interest in a determination 2 that Westchester has no liability to Monadnock under 3 the bonds. And it's not as though we're doing this in 4 a vacuum. We are basing it on a finding of the 5 arbitrators in New York that said Monadnock breached. 6 And based upon Monadnock's breach, there is no 7 liability that Westchester has. 8 THE COURT: Let me ask you this way. 9 MR. MAGOLNICK: Sure. 10 THE COURT: Show me the one case you have where 11 you are not a party to -- you had an agreement that you 12 were a party to, you were not a party to a -- another 13 action, and you chose, because you had an indirect -- 14 the other action had an indirect effect upon your 15 rights -- 16 MR. MAGOLNICK: Yes, Your Honor. 17 THE COURT: -- that the court said, yes, you can 18 file that action in another jurisdiction other than the 19 mandatory jurisdiction because it was -- it was 20 permissible under the action that you -- under the 21 contracted agreement that you were not a party of but 22 you were indirectly impacted by. 23 MR. MAGOLNICK: You want a case that specifically 24 says that? 25 THE COURT: Well, something that's analogous.</p>	<p style="text-align: right;">Page 19</p> <p>1 clause, and -- and when I have to resolve potential 2 conflicts that could arise from say the New York court 3 making a judgment and this court making a judgment, I 4 think we need to err on the fact that there's a 5 mandatory forum selection clause. And who filed first, 6 I'm not even sure that that necessarily controls what 7 I'm doing because of that. And because of that, I 8 think I need to grant the motion to dismiss. 9 MR. MAGOLNICK: Okay. 10 MR. GILBERT: Thank you. 11 MR. MAGOLNICK: Thank you, Your Honor. 12 MR. GILBERT: I have a proposed order. We'll 13 just put "granted." 14 THE COURT: Well, I think you want to -- I mean 15 this is an appealable order. I think we need to say 16 something more than "granted." 17 MR. MAGOLNICK: We can say "for the reasons set 18 forth in the record." 19 MR. GILBERT: Based upon the mandatory forum 20 selection clause. 21 THE COURT: Well, maybe you just want to state 22 "for the reasons announced by the Court for the 23 record." 24 MR. MAGOLNICK: Right. And then we can order the 25 transcript.</p>
<p style="text-align: right;">Page 18</p> <p>1 Give me something that's analogous. Something that 2 would have me rule in your favor, put it that way. 3 MR. MAGOLNICK: I'm looking at the statute that 4 we're going under, 86.201, that says that any person 5 claiming to be interested or may be in doubt about his 6 or her rights under a contract can seek a declaration 7 of rights, status, or other equitable or legal 8 relations thereto. We are not seeking -- 9 MR. GILBERT: It's not -- 10 MR. MAGOLNICK: We are not seeking a declaration 11 under the indemnity agreement. We are seeking it under 12 the bonds which is -- in which we have an interest. 13 THE COURT: But -- 14 MR. MAGOLNICK: We've alleged we have an 15 interest. 16 THE COURT: And I accept that. 17 MR. MAGOLNICK: I don't have a case that 18 answers -- 19 THE COURT: The problem that you have is that I 20 don't know if there's any cases where there was a 21 mandatory forum selection clause in the other 22 agreement. 23 MR. MAGOLNICK: We haven't found one, Judge. 24 THE COURT: And that's the problem that I'm 25 having is that there's a mandatory forum selection</p>	<p style="text-align: right;">Page 20</p> <p>1 (This proceeding was concluded at 11:30 a.m.) 2 --- 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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1 CERTIFICATE OF REPORTER
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3 STATE OF FLORIDA)
4)
5 COUNTY OF MIAMI-DADE)
6
7 I, Cicely Moore, Court Reporter, certify that I
8 was authorized to and did stenographically report the
9 proceedings at the time and place described herein; that
10 the transcript is a true and complete record of said
11 proceedings.
12 Dated this 10th day of May, 2018.
13
14 C Moore
15 Cicely Moore
16 Notary Public State of Florida
17 Commission #GG124933
18 Expires July 17, 2021
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